

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE
LITIGATION

THIS DOCUMENT RELATES TO:

COUNTY OF SUFFOLK,

Plaintiff,

v.

ABBOTT LABORATORIES, INC., et al.,

Defendant.

MDL No. 1456

Master File No. 01-CV-12257 (PBS)

HON. PATTI B. SARIS

**RESPONSE OF GENENTECH, INC. TO
SUFFOLK COUNTY'S SUPPLEMENTAL FILING**

Defendant Genentech, Inc., ("Genentech") submits this individual response to Suffolk County's Affidavit of Aaron D. Hovan Providing (1) Methodology and Documents Used To Estimate AWP Spread and (2) Additional Information Regarding Defendants ("Supplemental Filing"). Genentech has not been named as a defendant in any other AWP case, and, therefore, is one of the "Suffolk 13." Genentech has joined the common brief in response to the Supplemental Filing and makes these additional points on its own behalf.

1. The Supplemental Filing does not mention Genentech at all. There are absolutely no references to Genentech in Mr. Hovan's Affidavit or any of the Exhibits. In fact, there are no allegations about Genentech because Genentech has never been the subject of any other AWP investigation, subpoena, or lawsuit. The only piece of information that ties this case to Genentech is the inclusion of one Genentech drug, Pulmozyme, on the lists of drugs and prices.

2. Suffolk County has provided the Court with false or inaccurate pricing data for Pulmozyme.

A. First, the AWPs that Suffolk County says were published in the Red Book are incorrect. In 2001, the Red Book AWP for 30 units of 2.5 ML dose of Pulmozyme was \$1,253.41. (See 2001 Red Book at Ex. 1, attached hereto.) Suffolk County falsely claims that the published AWP was \$1,439.48. (See Supplemental Filing at Ex. B.) In 2003, the Red Book AWP for a single 2.5 ML unit dose of Pulmozyme was \$43.87. (See 2003 Red Book at Ex. 2, attached hereto.) Suffolk County falsely claims that the published AWP was \$47.98. (See Supplemental Filing at Ex. C.)

B. Second, Suffolk County also provided on-line pharmacy prices for Pulmozyme which are false, incorrect or unsubstantiated. Costco.com currently offers a single dose at \$53.69. (See Ex. 3, attached hereto.) However, Suffolk County falsely alleges that the 2004 Costco price is \$49.73. (See Supplemental Filing at Ex. D.) While Suffolk County claims that the 2004 DrugStore.com price for a single dose was \$45.96, (See Supplemental Filing at Ex. C), DrugStore.com does not offer Pulmozyme in single unit doses. (See Ex. 4, attached hereto). Even if DrugStore.com's volume price of \$1414.55 for 30 units were divided by 30 and applied to a single dose sale, the price would be \$47.15.

3. Finally, Suffolk County claims that the "average retail price is estimated to be 1.27 times the true average wholesale price." (See Supplemental Filing at p. 2.) This 1.27 estimate is derived from a sample of drugs that are radically dissimilar to Pulmozyme. Pulmozyme is an inhalation solution of recombinant human deoxyribonuclease I (rhDNase), an enzyme which selectively cleaves DNA. It is used for the treatment of cystic fibrosis. The sample upon which Suffolk County relies does not include any drugs in the same therapeutic category as Pulmozyme, nor does it include drugs based on recombinant rhDNase. Notwithstanding these obvious defects in the sample, Suffolk County makes no attempt to

explain why its theory that the average retail price is 1.27 times the true average wholesale price should be applicable to Pulmozyme.

For the reasons stated herein, and in the common brief, Genentech respectively requests the Court to dismiss this case, with prejudice, against Genentech.

Dated: November 30, 2004

Respectfully submitted,

REED SMITH LLP



Kathleen H. McGuan
1301 K Street, N.W.
Suite 1100 – East Tower
Washington, DC 20005

Counsel for the Genentech, Inc.

EXHIBIT 1

PSEDU/488

200

PROD/MFR	NDC	AWP	DP	OBC	PROD/MFR	NDC	AWP	DP	OBC	PROD/MFR	NDC
PSEUDO-PD (Southwood) gg/pseudoeph					(Raway) TAB, PO, 60 mg, 100s ea UD00686-0012-20	5.50				PURELINE BASIC INFUSION W/O BUTTERFLY (Hypoguard)	
CER, PO, 300 mg-60 mg, 30s ea.....58016-0791-30	22.34				PSEUDOVENT (Ethex) gg/pseudoeph					device	
60s ea.....58016-0791-60	41.97				CER, PO, 250 mg-120 mg, 100s ea.....58016-0791-00	67.70				SET, (27G, 23" TUBING)	
100s ea.....58016-0791-00	67.70				25s ea.....08317-9005-25					(27G, 43" TUBING)	
PSEUBROM (Alphagen) bromphen/pseudoeph					25s ea.....08317-9004-25						
CER, PO, 12 mg-120 mg, 100s ea.....59743-0060-01	49.95				PURELINE COMFORT DETACHABLE IN (Hypoguard)					device	
PSEUBROM-PD (Alphagen) bromphen/pseudoeph					CER, PO, 300 mg-60 mg, 100s ea.....59743-0061-01	45.95				SET, (27G, 23" TUBING, HOSPITAL)	
CER, PO, 6 mg-60 mg, 100s ea.....59743-0061-01	45.95				10s ea.....08317-9009-10					(27G, 23" TUBING, STANDARD)	
PSEUDO-CHLO (Geneva) cpm/pseudoeph					10s ea.....08317-9001-10					(27G, 43" TUBING, HOSPITAL)	
CER, PO, 8 mg-120 mg, 100s ea.....00781-2915-01	22.50				10s ea.....08317-9008-10					(27G, 43" TUBING, STANDARD)	
PSEUDO-G (Southwood) gg/pseudoeph					10s ea.....08317-9000-10						
CER, PO, 250 mg-120 mg, 30s ea.....58016-0790-30	27.35				PURELINE CONTACT INFUSION (Hypoguard)					device	
60s ea.....58016-0790-60	52.65				SET, (27G, 23" TUBING, 10 MM)					SET, (27G, 23" TUBING, 10 MM)	
100s ea.....58016-0790-00	84.92				15s ea.....08317-9007-15					(27G, 23" TUBING, 8 MM)	
PSEUDO-Q/PSI (Major) gg/pseudoeph					15s ea.....08317-9012-15					(27G, 43" TUBING, 10 MM)	
TER, PO (CAPLET)					15s ea.....08317-9006-15					(27G, 43" TUBING, 8 MM)	
600 mg-120 mg, 100s ea.....00904-5404-60	59.90				PURINETHOL (Glaxo Wellcome)						
250s ea.....00904-7861-70	113.40				mercaptopurine						
PSEUDOCHLOR (Major) cpm/pseudoeph					TAB, PO, 50 mg, 25s ea ..00173-0807-25	82.50					
CER, PO, 8 mg-120 mg, 250s ea.....00804-7777-70	37.45				250s ea.....00173-0807-65	70.75					
PSEUDOCOT-C (Truxton) cpm/pseudoeph					PYRAZINAMIDE (American Health)						
CER, PO, 8 mg-120 mg, 100s ea.....00463-3035-05	19.80				TAB, PO, 500 mg, 100s ea UD62684-0848-01	118.20					
PSEUDOCOT-G (Truxton) gg/pseudoeph					(ESI Lederle Generics)						
TER, PO, 100 mg-60 mg, 100s ea.....00463-7014-01	10.80				TAB, PO, 500 mg, 100s ea ..00005-5093-23	91.75					
PSEUDOCOT-T (Truxton) pseudoeph/tri proloidine					500s ea.....00005-5093-31	436.00					
TAB, PO, 60 mg-2.5 mg, 1000s ea.....00463-6277-10	24.00				(Phys Total Care)						
PSEUDOEPH/TRI PROLIDINE					TAB, PO, 500 mg, 120s ea ..54868-2487-01	132.75					
IGEA					(UDL)						
TAB, PO, 60 mg-2.5 mg, 100s ea.....	2.73				TAB, PO (ROBOT READY 25X1)						
(Consolidated Midland)					500 mg, 25s ea ..51079-0691-19	32.75					
TAB, PO, 60 mg-2.5 mg, 100s ea.....00223-2115-01	4.25				(10X10)						
1000s ea.....00223-2115-02	29.50				500 mg, 100s ea ..51079-0691-20	116.50					
(Consolidated Midland) See TRIACIN					(Versa Pharm)						
(Interparm)					TAB, PO, 500 mg, 60s ea ..61748-0012-06	65.10					
TAB, PO, 60 mg-2.5 mg, 30s ea.....53746-0288-30	3.60				90s ea.....61748-0012-09	96.15					
50s ea.....53746-0288-50	4.65				100s ea.....61748-0012-01	104.35					
100s ea.....53746-0288-01	7.55				(10X10)						
1000s ea.....53746-0288-10	42.10				500 mg, 100s ea ..81748-0012-11	119.85					
(DHM) See TRISUDRINE					500s ea.....61748-0012-05	496.95					
(Raway)					PYREGESIC-C (Truxton)						
TAB, PO, 60 mg-2.5 mg, 100s ea UD ..00686-0046-20	7.00				apap/codaine						
(Truxton) See PSEUDOCOT-T					TAB, PO, 300 mg-30 mg, 500s ea, C-II ..00463-6278-10	58.80					
(Vita-Rx) See VI-SUDO					PYRIDATE (Truxton)						
SHEDDIE					phenazopyridine hydrochloride						
SHEDDIE					TAB, PO, 100 mg, 1000s ea ..00463-6162-10	31.20					
(Amend)					200 mg, 1000s ea ..00463-6163-10	39.50					
POW, NA (U.S.P.)					PYRIDIUM (Waraer Chilcott Labs)						
25 gm.....17317-0716-02	14.00				phenazopyridine hydrochloride						
100 gm.....17317-0716-03	35.00				TAB, PO, 100 mg, 100s ea ..00430-0180-24	66.18					
1000 gm.....17317-0716-05	210.00				200 mg, 100s ea ..00430-0181-24	127.52					
(Gallipot)					(Allscripts)						
POW, NA (U.S.P.,N.F.)					REPACK						
100 gm.....51552-0125-99	47.40				TAB, PO, 200 mg, 6s ea ..54569-0089-00	6.66					
500 gm.....51552-0125-50	179.70				(Phys Total Care)						
(Medisca)											
POW, NA (U.S.P.)					REPACK						
10 gm.....38779-0254-01	13.50				TAB, PO, 200 mg, 10s ea ..54868-0456-02	14.89					
25 gm.....38779-0254-04	20.25				PYRIDIUM PLUS (Warner Chilcott Labs)						
100 gm.....38779-0254-05	51.75				butabarbita/hyoscyamine hbr/phenazopy						
500 gm.....38779-0254-08	128.00				TAB, PO, 15 mg-0.3 mg-150 mg, 30s ea.....00430-0182-15	38.26					

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EXHIBIT 2

PROD/MFR	NDC	AWP	DP	OBG	PROD/MFR	NDC	AWP	DP	OBG	PROD/MFR	NDC	AWP
PULMOMATE COMPRESSOR/NEBULIZER (Sunrise Medical)												
nebulizer, direct patient interface												
DEV, NA (METAL HEAD COMPRESSOR)												
ea.....	33413-0465-00	150.00										
PULMOZYME (Genentech)												
dornase alfa												
SOL, IJ (AMP,INNER NDC)												
2.5 mg/2.5 ml,												
2.5 ml.....	50242-0100-39	43.87										
(AMP)												
2.5 mg/2.5 ml,												
2.5 ml 30s.....	50242-0100-40	1439.48										
PUMICE (A-A Spectrum)												
POW, NA (U.S.P.)												
500 gm.....	49452-6130-01	13.70										
2500 gm.....	49452-6130-02	54.00										
(Gallipot) <i>See PUMICE STONE</i>												
PUMICE STONE (Gallipot)												
pumice												
POW, NA (EXTRA FINE,AF)												
56.7 gm.....	51552-0465-02	7.32										
PUMP, INFUSION												
(Abbott Hosp) <i>See CONTROLLER LIFECARE</i>												
(Abbott Hosp) <i>See LIFECARE PUMP MODEL 4 PIGGY-BACK</i>												
(Abbott Hosp) <i>See PLUM LC 5000</i>												
(Medtronic Minimed) <i>See PARADIGM INSULIN INFUSION PUMP</i>												
PUMP, INFUSION, PATIENT CONTROLLED												
ANALGESIA (PCA)												
(Abbott Hosp) <i>See PCA PLUS 2</i>												
PURELINE BASIC INFUSION W/BUTTERFLY												
(Hypoguard)												
kit, administration, intravenous												
DEV, NA (27G, 23" TUBING)												
25s ea.....	08317-9003-25	140.00	112.00									
(27G, 43" TUBING)												
25s ea.....	08317-9002-25	140.00	112.00									
PURELINE BASIC INFUSION W/O BUTTERFLY												
(Hypoguard)												
kit, administration, intravenous												
DEV, NA (27G, 23" TUBING)												
25s ea.....	08317-9005-25	128.75	103.00									
(27G, 43" TUBING)												
25s ea.....	08317-9004-25	128.75	103.00									
PURELINE COMFORT DETACHABLE INFUSION												
(Hypoguard)												
kit, administration, intravenous												
DEV, NA (27G, 23" TUBING, HOSPITAL)												
10s ea.....	08317-9008-10	121.25	97.00									
(27G, 23" TUBING, STANDARD)												
10s ea.....	08317-9001-10	91.90	73.50									
(27G, 43" TUBING, HOSPITAL)												
10s ea.....	08317-9008-10	121.25	97.00									
(27G, 43" TUBING, STANDARD)												
10s ea.....	08317-9080-16	91.90	73.50									
PURELINE CONTACT INFUSION (Hypoguard)												
kit, administration, intravenous												
DEV, NA (27G, 23" TUBING, 10 MM)												
15s ea.....	08317-9087-15	96.25	77.00									
(27G, 23" TUBING, 8 MM)												
15s ea.....	08317-9012-15	96.25	77.00									
(27G, 43" TUBING, 10MM)												
15s ea.....	08317-9006-15	96.25	77.00									
PURINETHOL (GSK Pharm)												
mercaptopurine												
TAB, PO, 50 mg, 25s ea.....	00173-0807-25	100.49										
250s ea.....	00173-0807-65	957.19										
PYRANTEL PAMOATE (A-A Spectrum)												
POW, NA (U.S.P.)												
25 gm.....	49452-8138-01	30.60										
100 gm.....	49452-8138-02	109.00										
PYRAZINAMIDE (Allscripts)												
REPACK												
TAB, PO, 500 mg, 100s ea.....	54569-3950-00	91.75										
(Phyto Total Care)												
REPACK												
TAB, PO, 500 mg, 120s ea.....	54868-2487-01	286.76										
(Blada Pharm)												
TAB, PO, 500 mg, 100s ea.....	00005-5093-23	120.55										
500s ea.....	00005-5093-31	596.35										
(VersaPharm)												
TAB, PO, 500 mg, 60s ea.....	61748-0012-06	68.63										
90s ea.....	61748-0012-09	101.35										
100s ea.....	61748-0012-01	109.97										
(10X10)												
500 mg, 100s ea UD.....	61748-0012-11	117.66										
500s ea.....	61748-0012-05	523.86										
PYREGESIC-C (Truxton)												
acetaminophen/codeine phosphate												
TAB, PO, 300 mg-30 mg.....	00463-8278-10	58.80										
(EE)												
PYRIDATE (Truxton)												
phenazopyridine hydrochloride												
TAB, PO, 100 mg.....	00463-6162-10	31.20										
200 mg, 100s ea.....	00463-6163-10	39.50										
PYRIDUM (PD-Rx Pharm)												
REPACK												
phenazopyridine hydrochloride												
TAB, PO, 200 mg, 6s ea.....	55289-0689-06	15.68										
(Phyto Total Care)												
REPACK												
TAB, PO, 200 mg, 10s ea.....	54868-0456-02	17.10										
(Warner Chilcott Labs)												
TAB, PO, 15 mg-0.3 mg-150 mg.....	54569-0192-02	20.09										
15s ea.....	54569-0192-01	40.18										
(Warner Chilcott Labs)												
TAB, PO, 15 mg-0.3 mg-150 mg.....	00430-0182-15	40.18										
PYRIDOSTIGMINE BROMIDE (Geneva)												
pyridostigmine bromide												
TAB, PO, 60 mg, 100s ea.....	00781-5015-81	59.98										
PYRIDOSTIGMINE BROMIDE (Geneva)												
pyridostigmine bromide												
TAB, PO, 60 mg, 100s ea.....	00781-5015-81	59.98										
PYRIDOXINE HCL (A-A Spectrum)												
(APP) <i>See PYRIDOXINE HCL</i>												
(Baker, J.T.) <i>See PYRIDOXINE HYDROCHLORIDE</i>												
(Consolidated Midland) <i>See PYRIDOXINE HCL</i>												
(Consolidated Midland) <i>See VITABEE 6</i>												
(Gallipot) <i>See PYRIDOXINE HCL</i>												
(Hyrax) <i>See PYRIDOXINE HCL</i>												
(Legere) <i>See RODEX</i>												
(Meridian Pharm) <i>See PYRIDOXINE HCL</i>												
(Truxton) <i>See PYRIDOXINE HCL</i>												
PYRIDOXINE HCL (A-A Spectrum)												
pyridoxine												
POW, NA (U.S.P.)												
25 gm.....	49452-6140-01	10.10										
100 gm.....	49452-6140-02	19.60										

EXHIBIT 3

[« back to search](#)**Price display may include various strengths and generic alternatives.**

name (manufacturer)	package size	qty (AMPULES)		
		1	2	3
PULMOZYME 1MG/ML AMPUL (GNT)	2.5 ML/AMPULE	\$53.69	\$101.89	\$149.19

[Drug Description](#)

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EXHIBIT 4

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30 ampules 60 ampules add to cart

Pulmozyme 2.5ML ampule 1MG/ML solution \$1,414.55 \$2,757.79 save \$71.31 add to cart

calculate quantity

These are self-pay prices and do not take into account any discounts or insurance coverage that you may have. Actual prices are calculated at the time of your order.

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Information on Pulmozyme

Learn more about usage, cautions, and possible side effects.

Solution
Chemical Name: DORNASE ALFA (DOR-nase)

Common uses
This medicine is an enzyme used to reduce the number of lung infections and to improve lung function in patients with cystic fibrosis.

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Before using
INFORM YOUR DOCTOR OR PHARMACIST of all prescription and over-the-counter medicine that you are taking. Inform your doctor of any other medical conditions or allergies.

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Directions
FOLLOW THE DIRECTIONS for using this medicine provided by your doctor. BEFORE USING THIS MEDICINE, a health care professional may provide detailed instructions for use of this medicine. Ask any questions that you may have about this medicine or how to use it. STORE THIS MEDICINE IN THE REFRIGERATOR. Keep it in the original foil pack until you are ready to use

YOU PRES
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it. DO NOT USE THE MEDICINE if it is cloudy or discolored. USE THE CONTENTS OF THE AMPULE as soon as it is opened. Discard any unused medicine. IF YOU MISS A DOSE OF THIS MEDICINE, use it as soon as possible. If it is almost time for your next dose, skip the missed dose and go back to your regular dosing schedule. Do not use 2 doses at once.

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Cautions

DO NOT MIX THIS MEDICINE with other medicines before using it.

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Possible side effects

SIDE EFFECTS, that may go away during treatment, include temporary loss of voice or hoarseness, mild sore throat, redness around the eyes, chest pain, skin rash, or itching. If they continue or are bothersome, check with your doctor. If you notice other effects not listed above, contact your doctor, nurse, or pharmacist.

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Drug interactions

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If you take too much

If overdose is suspected, contact your local poison control center or emergency room immediately.

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Additional information

DO NOT SHARE THIS MEDICINE with others for whom it was not prescribed. DO NOT USE THIS MEDICINE for other health conditions. KEEP THIS MEDICINE out of the reach of children. IF USING THIS MEDICINE FOR AN EXTENDED PERIOD OF TIME, obtain refills before your supply runs out.

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